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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/886,730	06/21/2001	John Joseph Curro	8594	6712

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EXAMINER

BEFUMO, JENNA LEIGH

ART UNIT	PAPER NUMBER
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1771

DATE MAILED: 01/07/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/886,730

Applicant(s)

CURRO ET AL.

Examiner

Jenna-Leigh Befumo

Art Unit

1771

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 29 September 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-7 and 9-26 is/are pending in the application.
- 4a) Of the above claim(s) 1-5 and 16-23 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 6,7,9-15 and 24-26 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 29 September 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☒ The proposed drawing correction filed on 29 September 2003 is: a) ☒ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_. 6) ☒ Other: *Petition Decision*.

## DETAILED ACTION

### *Response to Amendment*

1. The Amendment submitted on September 29, 2003, has been entered. Claim 8 has been cancelled. Claims 6, 9, 11, and 14 have been amended and claims 24 – 26 have been added. Therefore, the pending claims are 1 – 7 and 9 – 26. Claims 1 – 5 and 16 – 23 are withdrawn from consideration as being drawn to a nonelected invention.
2. The rejections to claim 8 set forth in the previous Office Action are considered moot since the claim has been cancelled.
3. The Affidavit under 37 CFR 1.132 filed September 29, 2003 is insufficient to overcome the rejection of claims 6, 7, and 9 – 15 based upon Srinivasan et al. (5,567,501) or Palumbo (WO 96/10979) as set forth in the last Office action because: The affidavit did not include all the described figures and therefore was incomplete. Figure 1, described as a bonded nonwoven fabric with a bond site aspect ratio of 1:1, was the same picture as Figure 3, described as a bonded nonwoven fabric with a bond site aspect ratio of 10:1. Further, the Examiner's copy of Figure 5 has poor resolution and the apertures and bond sites, or lack thereof, cannot be clearly discerned in the picture. Thus, the figures could not be compared to each other, or establish that the aspect ratio of the bond site is critical to the nonwoven structure and demonstrate unexpected results for an aspect ratio of at least 3.

Additionally, the Affidavit refers only to the general invention in the present application and not to the product produced by the prior art or the scope of the individual claims of the application. Thus, the Affidavit is not commensurate in scope with the claims. In other words, the claims recite an apertured nonwoven fabric with three layers where the bond sites have an

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aspect ratio of 3. However, the Affidavit shows that the aspect ratio is critical to an apertured nonwoven laminates produced by forming bond sites and then applying a force to stretch the nonwoven fabric and rupture the bond sites. Since the prior art is produce by a different method, then the evidence that the aspect ratio is critical to the Applicant's method is not commensurate in scope with the claims since the method of forming the apertures is not claimed. Further, the Affidavit is not commensurate in scope with the present claims since the Applicant uses examples having an aspect ratio of 1:1, 5:1, 10:1 and 30:1, while the claims are drawn to an aspect ratio of 3:1. Thus, evidence that a bonded web with bond sites having an aspect ratio of 5:1 produces apertures only at the bond sites is not sufficient to demonstrate that a bonded web with bond sites having an aspect ratio of 3:1 would only produce apertures at the bond sites as well. Therefore, the Affidavit is not sufficient to overcome the rejections.

4. The objection set forth in section 19 of the previous Office Action is withdrawn since the Applicant has amended the claims so that the aspect ratio is referred to in the same format in all the claims.

5. The Amendment is sufficient to overcome the 35 USC 102 rejection to claims 6, 7, and 10 based on Srinivasan et al. or Palumbo since neither of these references discloses the aspect ratio of the bond sites and claim 6 has been amended to require that the bond site has an aspect ratio of at least 3. However, a new rejection has been set forth below.

#### ***Election/Restrictions***

6. Applicant's election of Group II, claims 6 – 15 in the response filed September 29, 2003 is acknowledged. Because applicant did not distinctly and specifically point out the supposed

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errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

### *Drawings*

7. The drawings were received on September 23, 2003. These proposed amendments to the drawings and to the specification are sufficient to overcome the objections to the drawings set forth in sections 7 – 10 of the previous Office Action. Further, Figures 17A and 17B were mistakenly included in the previous Office Action and do not exist in the present application. The drawings are acceptable.

### *Terminal Disclaimer*

8. The terminal disclaimer filed on September 29, 2003 disclaiming the terminal portion of any patent granted on this application which would extend beyond the expiration date of Patent Application Numbers 09/467,938, 09/553,641, 09/553,871, 09/584676, 09/886,740, and 09/886,828 has been reviewed and is accepted. The terminal disclaimer has been recorded.

### *Double Patenting*

9. Claims 6 – 15 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 6 – 10 of copending Application No. 09/886829. Although the conflicting claims are not identical, they are not patentably distinct from each other because the structure of the product claimed is identical, having three layers, where the two outer layer are bonded together at bond sited with the third apertured layer disposed between those two layers.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

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10. Since this application was not included in the terminal disclaimer filed September 29, 2003, the double patenting rejection is maintained.

***Claim Rejections - 35 USC § 103***

11. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

12. Claims 6, 7, 9 – 12, 14, and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Srinivasan et al.

The features of Srinivasan et al. have been set forth in sections 21 and 24 of the previous Office Action. Since the independent claim, 6, was amended to include the recitation that the bond sites have an aspect ratio of at least three, which is similar to cancelled claim 8, claim 6 is now rejected for the reasons set forth in section 24 of the previous Office Action to reject claim 8. Further, it is noted that Figures 3 – 8 show bonded nonwoven laminates with apertures of different shapes and sizes (Clearer versions of these pictures can be found in Patent 5,656,119, which is a divisional application of 5,567,501). Thus, the apertured nonwoven web taught by Srinivasan et al. can be produced with different shaped apertures without destroying the invention.

13. Claims 6, 7, 9 – 12, 14, and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Palumbo et al.

The features of Palumbo have been set forth in sections 22 and 25 of the previous Office Action. Since the independent claim, 6, was amended to include the recitation that the bond sites have an aspect ratio of at least three, which is similar to cancelled claim 8, claim 6 is now rejected for the reasons set forth in section 25 of the previous Office Action to reject claim 8.

14. Claim 13 stands rejected under 35 U.S.C. 103(a) as being unpatentable over Srinivasan et al. as applied to claim 11 above, and further in view of Abuto et al. (5,788,684) for the reasons of record.

Claim 13 stands rejected under 35 U.S.C. 103(a) as being unpatentable over Palumbo as applied to claim 11 above, and further in view of Abuto et al. for the reasons of record.

15. Claims 6, 7, 9 – 15 and 24 – 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Benson et al. (5,628,097).

Benson et al. discloses a nonwoven web which is weakened at a plurality of locations so that when a tensioning force is applied to the nonwoven web, the weakened locations rupture to produce a plurality of apertures (abstract). The nonwoven web can be a single nonwoven web made from bonded carded webs, spunbonded webs, meltblown webs, or multiple layers of these nonwoven webs (column 2, lines 60 – 65). Benson et al. discloses that the bonded and apertured nonwoven web used as the topsheet can be made from nonwoven laminates such as spunbond/meltblown/spunbond (SMS) laminates instead of a single nonwoven layer (column 7, lines 27 – 35). Thus, the three-layer bonded SMS nonwoven material would correspond to the applicant's invention with the two outer spunbond nonwoven layers, corresponding to the Applicant's first and second webs, and the middle, meltblown layer would be disposed in the void space between the two outer layers. In this case, both the outer spunbond layers would be made from the same material and have bond sites. Benson et al. also teaches that the nonwoven laminate material can include film layers (column 7, lines 43 – 45) as well as extensible, or elastic material (column 7, lines 18 – 20). Therefore, it would have been obvious to one of ordinary skill in the art to use an elastic layer as the middle layer in a multi-layer laminate to

provide the overall laminate structure with elastic properties which would help the laminate maintain the composite shape after it is stretched and during use.

Further, Benson et al. teaches that the bond sites are formed by protuberances 116 which can be elliptical, circular, square or rectangular in shape (column 8, lines 28 – 35). As shown in Figure 3, the protuberances and the bond sites produced are narrow and elliptical in shape. While Benson et al. fails to explicitly teach an aspect ratio of greater than 3, the bond site shown in Figure 3 is long and narrow. Even though one of ordinary skill in the art cannot use the figures to determine the exact size of the bond sites, the picture clearly shows that long and narrow bond sites are used to produce the apertured nonwoven web. Therefore, based on the disclosure and figures taught by Benson et al. it would have been obvious to one of ordinary skill in the art to choose a bond site with an aspect ratio of greater than 3 and a thickness of less than 0.020 inches in the bonded nonwoven fabric taught by Benson et al. since the figure teaches using bond sites which are long and narrow. Further, it would have been obvious to one having ordinary skill in the art at the time the invention was made to choose an aspect ratio of greater than 3 and a thickness of less than 0.020 inches, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 220 F.2d 454, 105 USPQ 233 (CCPA 1955). Thus, claims 6, 7, 9 – 12, 14, 15, and 24 – 26 are rejected.

Finally, Benson et al. discloses that the apertured nonwoven web is used as a topsheet in a disposable absorbent articles (column 1, lines 5 – 10 and column 7, lines 1 – 5). The disposable absorbent product has a composite structure comprising a topsheet, an absorbent core and a backsheet (column 4, lines 51 – 54). The absorbent core can have absorbent gelling



materials (column 5, lines 25 – 33). Therefore, the absorbent laminate comprising the apertured nonwoven web also includes absorbent gelling materials. Thus, claim 13 is rejected.

### *Response to Arguments*

16. Applicant's arguments filed September 29, 2003 have been fully considered but they are not persuasive. The Applicant argues that based on the Affidavit provided, the rejections based on Srinivasan et al. or Palumbo should be withdrawn. However, as set forth above the affidavit was found insufficient. Particularly, the Affidavit argues that the aspect ratio is critical to the process to produce an aperture nonwoven. The Applicant does not address the structure of the apertured nonwoven as it compares to the structure of the apertured nonwoven fabrics taught by the prior art. Changing the size of the aperture in the nonwoven fabric taught by Srinivasan et al. or Palumbo, would not destroy the invention or produce any unexpected results. Instead, the final product would have different size openings which would effect the amount of air or fluid which is allowed to pass through the nonwoven itself. Further, it has been found that a modification involving a mere change in the size of a component is generally recognized as being within the level of ordinary skill in the art. *In re Rose*, 105 USPQ 237 (CCPA 1955). Since the Applicant argues that the bond site aspect ratio is critical to the process of making the nonwoven material, the Applicant would need to include method limitations which are commensurate in scope with the arguments in the affidavit.

### *Conclusion*

17. Applicant's amendment necessitated the new grounds of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jenna-Leigh Befumo whose telephone number is (571) 272-1472. The examiner can normally be reached on Monday - Friday (8:00 - 5:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on (571) 272-1478. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (571) 272-0994.

Jenna-Leigh Befumo  
December 18, 2003



CHERYLA A. JASKA  
PRIMARY EXAMINER